

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

KEVIN COLLMAN,)	CIVIL NO. 09-00265 SOM-LEK
)	
Plaintiff,)	
)	
vs.)	
)	
HSBC BANK USA, NATIONAL)	
ASSOCIATION AS TRUSTEE FOR)	
WFMB 2007-AR6,)	
)	
Defendants.)	
_____)	

**FINDING AND RECOMMENDATION THAT
CASE BE DISMISSED WITHOUT PREJUDICE**

Pursuant to Rule 16(a) of the Federal Rules of Civil Procedure, on June 12, 2009, Senior District Judge Helen Gillmor issued an order setting the Rule 16 Scheduling Conference in this matter for September 14, 2009. Plaintiff Kevin Collman ("Kollman") failed to appear at this conference. Plaintiff also failed to file a scheduling conference statement, as required by Rule LR16.2(b) of the Local Rules of Practice of the United States District Court for the District of Hawaii ("Local Rules").

Courts do not take failure to comply with court orders lightly. Federal Rule of Civil Procedure 16(f)(1) provides, in pertinent part:

On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:
(A) fails to appear at a scheduling or other pretrial conference[.]

Pursuant to Rule 16(f)(1)(A), the district judge may "dismiss[] the action or proceeding in whole or in part" if a party fails to appear at a scheduling conference. See Fed. R. Civ. P. 37(b)(2)(A)(v).

Plaintiff failed to comply with the order setting the Rule 16 Scheduling Conference and has failed to prosecute this case. After weighing the five dismissal factors set forth in Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000),¹ the Court finds that the public interest in expeditious resolution of this litigation and the court's interest in managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, the defendants will not be prejudiced and there are no less drastic alternatives available at this time.

In accordance with the foregoing, this Court RECOMMENDS that the district judge DISMISS this case WITHOUT PREJUDICE.

IT IS SO FOUND AND RECOMMENDED.

¹ The Ninth Circuit has delineated five factors a district court must weigh in determining whether to dismiss a case for failure to comply with a court order: "1) the public interest; 2) the court's need to manage the docket; 3) the risk of prejudice to the defendant; 4) the public policy favoring disposition of cases on their merits; and 5) the availability of less drastic alternatives." Bautista, 216 F.3d at 841 (citation omitted).

DATED AT HONOLULU, HAWAII, September 28, 2009.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

**KEVIN COLLMAN V. HSBC BANK USA, ET AL; CIVIL NO. 09-00265 SOM-
LEK; FINDING AND RECOMMENDATION THAT CASE BE DISMISSED WITHOUT
PREJUDICE**